

## Senate Bill No. 19

### CHAPTER 913

An act to add Article 2.5 (commencing with Section 49430) to Chapter 9 of Part 27 of the Education Code, relating to pupil health, and making an appropriation therefor.

[Approved by Governor October 14, 2001. Filed  
with Secretary of State October 14, 2001.]

I am signing Senate Bill 19, which will help to significantly improve the nutrition and eating habits of California's school children. This bill establishes, as of January 1, 2004, various prohibitions on the sale of beverages in elementary and middle schools and places nutritional standards on the type of foods that may be sold to pupils during school breaks and through vending machines. The bill also increases the reimbursement a school receives for free and reduced-price meals and permits schools districts to convene a Child Nutrition and Physical Activity Advisory Committee. The bill appropriates \$5.5 million for grants to local school districts to implement the new nutrition standards and for monitoring and technical assistance costs of the State Department of Education.

Childhood obesity has become an epidemic in the United States and is a primary factor in type 2 diabetes and other long-term health problems. While poor diet and physician inactivity have been found to adversely influence the ability to learn and decrease motivation and attentiveness, healthy food has a positive impact on academic achievement.

While I am supportive of the new standards contained in SB19, I am deleting the appropriation of \$5.5 million in the bill because it is premature to allocate General Fund without first exploring the use of federal funds for this purpose. California does not currently use its full allotment of federal child nutrition funding that may be available to assist local districts in meeting the nutrition standards in this bill. Since the provisions of the bill are not intended to be operative for another two years, there is sufficient time to consider alternative funding options without jeopardizing timely implementation of the new standards.

GRAY DAVIS, Governor

#### LEGISLATIVE COUNSEL'S DIGEST

SB 19, Escutia. Pupil health.

(1) Existing law requires the governing board of a school district to give diligent care to the health and physical development of pupils.

This bill would authorize every public school to post a summary of nutrition and physical activity laws and regulations, and the school district policies and would require the State Department of Education to develop the summary of the laws and regulations.

(2) Existing law requires that 50% of the items, other than foods reimbursed under federal law, offered for sale each schoolday at any schoolsite by any entity or organization during regular school hours be selected from a prescribed list of foods.

The bill would, commencing January 1, 2004, require the sale of all foods on school grounds at elementary and middle schools, as defined, and at middle and high schools participating in a pilot program established by the bill, to be approved by the person or persons designated for this purpose by the school district, subject to funding being appropriated in the Budget Act of 2003.

The bill would, subject to funding being appropriated in the Budget Act of 2003, commencing January 1, 2004, with certain exceptions, permit the sale of foods at elementary schools only as full meals during breakfast and lunch periods and would require items that are sold during specified breaks to meet certain standards. The bill would restrict the sale of specified beverages at elementary and middle schools. The bill would require certain foods sold to pupils at specified times to meet specified requirements.

(3) Existing law requires the Superintendent of Public Instruction to reimburse school districts for certain costs associated with free and reduced price meals.

This bill would, commencing January 1, 2004, require that reimbursement to be increased to 23¢ per meal sold or served to pupils at elementary or middle schools.

(4) Existing law provides for various advisory committees to be formed at the school district level.

This bill would authorize a school district maintaining at least one middle school to convene a Child Nutrition and Physical Activity Advisory Committee that would develop and recommend to the governing board of the school for its adoption a school district policy on nutrition and physical activity. The committee would include school district governing board members, school administrators, food service directors, food service staff, parents, pupils, physical and health education teachers, dietitians, doctors, nurses, and interested community members. In developing the policy, the committee would be required to hold at least one public hearing. The bill would require the State Department of Education to provide a grant to a school district that develops and adopts a policy by January 1, 2003. The bill would appropriate \$5,500,000 to the Superintendent of Public Instruction for grants and technical support to school districts, and for program evaluation, as prescribed.

The funds appropriated by this bill for grants to school districts would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(5) By imposing new requirements on school districts, the bill would impose state-mandated local programs.



(6) This bill would require the Superintendent of Public Instruction to supervise the implementation of certain provisions enacted by the bill, as prescribed, for noncompliance. If the Superintendent of Public Instruction finds that a school district or county superintendent of schools fails to comply with those provisions, the superintendent would be required to provide the school district with a noncompliance notification and the school district would be required to adopt a corrective plan.

(7) The bill would require the Department of Education to establish a pilot program in which high schools voluntarily adopt food sale requirements.

(8) This bill would require the State Department of Education, with advice from the Child Nutrition Advisory Council, to design and implement a financial incentive grant program to help and encourage schools to implement their policies and meet specified goals.

(9) This bill would require the State Department of Education to monitor implementation of the program and to report to the Legislature annually and on June 1, 2004, as prescribed.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares as follows:

(a) Childhood obesity has reached epidemic levels in California and throughout the nation. Recent studies have shown that more than 30 percent of California youth are overweight and that adolescent obesity has doubled over the past two decades. In some California school districts, as many as 50 percent of pupils are overweight.

(b) Overweight and obese children are at higher risk for long-term health problems, including cardiovascular disease, stroke, hypertension, high blood pressure, gallbladder disease, Type 2 diabetes, asthma, and certain cancers. The lives of overweight youth are often also affected by



discrimination, psychological stress, poor body image, and low self-esteem. Eighty percent of obese adolescents remain obese as adults.

(c) Two-thirds of all deaths in California result from four chronic diseases: heart disease, cancer, stroke, and diabetes. Health experts agree that one of the most effective ways to prevent these chronic diseases is to establish policies and programs that encourage children and adolescents to develop healthy eating and exercise habits they can maintain throughout their lives.

(d) A child who is physically healthy is more likely to be academically motivated, alert, and successful. Results from the 1999 Physical Fitness test showed that only 20 percent of pupils in grades 5, 7, and 9 met the requirement to be considered fit.

(e) Healthy eating also plays an important role in learning and cognitive development. Poor diet has been found to adversely influence the ability to learn and to decrease motivation and attentiveness.

(f) The school environment plays an influential role in the foods children eat nearly every day. While the United States Department of Agriculture (USDA) regulates the nutrient content of meals sold under its reimbursable meal program, similar standards do not exist for “competitive foods” that are sold outside the USDA meal programs. Competitive foods are often very high in added sugar, sodium, and fat.

(g) The state’s support of school food services is inadequate. The State Department of Education monitors schools only once every five years and lacks the resources to provide any technical assistance. The last time the state increased the state meal subsidy, beyond a cost-of-living adjustment, was in 1981, leaving California ranked 41st in the nation in school meal reimbursement rates. In order to generate revenue, many schools sell or allow vendors to sell competitive foods on campus.

(h) In a survey conducted in 2000, 95 percent of responding California school districts reported that they sell fast foods, the most common of which are sodas, pizza, cookies, chips, and burritos, contributing to the fact that carbonated drinks are the single biggest source of refined sugars in the American diet, approximately 70 percent of children in the United States who are 2 to 11 years of age exceeded current dietary recommendations for intakes of total and saturated fat, and only 21 percent of California children meet the goal of eating five servings of fruits and vegetables per day.

SEC. 2. Article 2.5 (commencing with Section 49430) is added to Chapter 9 of Part 27 of the Education Code, to read:



Article 2.5. The Pupil Nutrition, Health, and Achievement Act of  
2001

49430. As used in this article, the following terms have the following meanings:

(a) “Elementary school” means a public school that maintains any grade from kindergarten to grade 6, inclusive, but no grade higher than grade 6.

(b) “Middle school” means any public school that maintains grade 7 or 8, but no grade higher than grade 9.

(c) “High school” means any public school maintaining any of grades 10 to 12, inclusive.

(d) “Full meal” means any combination of food items that meet a USDA-approved meal pattern.

49430.3. Notwithstanding any provisions of law, including, but not limited to, Chapter 3 (commencing with Section 38080) of Part 23 or Section 48931, this article shall control over contrary provisions relating to the sale of food items to public school pupils.

49430.5. (a) The reimbursement a school receives for free and reduced price meals sold or served to pupils in elementary or middle schools shall be increased to twenty-three cents (\$0.23).

(b) Each elementary and middle school shall receive a reimbursement of ten cents (\$0.10) for meals sold at full price.

(c) To qualify for the increased reimbursement for free and reduced price meals and for the reimbursement for meals sold at full price, a school shall follow the United States Department of Agriculture’s Enhanced Food Based Meal Pattern, the United States Department of Agriculture’s Nutrient Standard Meal Planning, California’s SHAPE Menu Patterns, or the USDA Traditional Meal Pattern.

(d) The reimbursement rates set forth in this section shall be adjusted annually for increases in cost of living in the same manner set forth in Section 42238.1.

(e) This section shall become operative on January 1, 2004 and shall become operative only if funding is approved in the Budget Act of 2003 for the purposes of increased reimbursements pursuant to this article.

49431. (a) At elementary and middle schools, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in the section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At elementary schools, the only food that may be sold to pupils during breakfast and lunch periods is food that is sold as a full



meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products, as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at elementary schools shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(3) Regardless of the time of day water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners are the only beverages that may be sold to pupils at an elementary school.

(c) In middle schools, from one-half hour before the start of the schoolday until after the end of the last lunch period, no carbonated beverage shall be sold to pupils.

(d) At middle schools, vending machines that contain beverage items that do not meet the requirements in this section shall remain locked or be rendered inoperable until after the end of the last lunch period.

(e) An elementary school may permit the sale of food items that do not comply with subdivisions (a) to (f), inclusive, of this section as part of a school fundraising event in any of the following circumstances:

(1) By pupils of the school if the sale of those items takes place off of school premises.

(2) By pupils of the school if the sale of those items takes place at least one-half hour after the end of the schoolday.

(f) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, this section shall not be waived pursuant to that article.

(g) Although a middle school is required to comply with those provisions of this section applicable to middle schools, it may, in addition, elect to apply for participation in the pilot program pursuant to Section 49433.7.

(h) This section shall become operative on January 1, 2004. School districts shall be required to comply with this section only if funds are appropriated in the Budget Act of 2003 for the purposes of providing support and technical assistance to school districts as set forth in Section 49433.5, for the purposes of providing grants to participating school



districts as set forth in subdivision (c) of Section 49433, and for the purposes of increasing meal reimbursements as set forth in Section 49430.5. The State Department of Education shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly within 30 days after enactment of the Budget Act of 2003 stating whether funds have been appropriated as set forth in this subdivision and in Section 49430.5.

49432. By January 1, 2004, every public school may post a summary of nutrition and physical activity laws and regulations, and shall post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. The State Department of Education shall develop the summary of state law and regulations.

49433. (a) A school district maintaining at least one elementary or middle school or high school that is participating in the pilot program pursuant to Section 49433.7 may convene a Child Nutrition and Physical Activity Advisory Committee that shall develop and recommend to the governing board of the school district for its adoption, school district policies on nutrition and physical activity. The committee shall include, but need not be limited to, school district governing board members, school administrators, food service directors, food service staff, staff, parents, pupils, physical and health education teachers, dietitians, health care professionals, and interested community members. In developing the policy, the committee shall hold at least one public hearing.

(b) The policies shall address issues and goals, including, but not limited to, all of the following:

- (1) Implementing the nutritional standards set forth in Section 49431.
- (2) Encouraging fundraisers that promote good health habits and discouraging fundraisers that promote unhealthy foods.
- (3) Ensuring that no pupil is hungry.
- (4) Improving nutritional standards.
- (5) Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold.
- (6) Ensuring, to the extent possible, that the food served is fresh.
- (7) Encouraging eligible pupils to participate in the school lunch program.
- (8) Integrating nutrition and physical activity into the overall curriculum.
- (9) Ensuring regular professional development for food services staff.
- (10) Ensuring pupils a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.





(11) Ensuring pupils engage in healthful levels of vigorous physical activity.

(12) Ensuring pupils receive nutrition education.

(13) Improving the quality of physical education curricula and increasing training of physical education teachers.

(14) Enforcing existing physical education requirements.

(15) Altering the economic structures in place to encourage healthy eating by pupils and reduce dependency on generating profits for the school from the sale of unhealthy foods.

(16) Developing a financing plan to implement the policies.

(17) Increasing the availability of organic fruits and vegetables and school gardens.

(18) Collaborating with local farmers' markets.

(c) A school district maintaining at least one elementary or middle school may apply to the State Department of Education for a grant to offset the costs of developing and adopting policies pursuant to this section. The grants shall be one-time grants and shall be available to applicant school districts by March 1, 2002.

(d) A participating school district shall receive a grant of no less than four thousand dollars (\$4,000) and no more than twenty-five thousand dollars (\$25,000), depending upon the size of the school district, for the purpose of offsetting the costs of developing the school district nutrition and physical activity policies.

49433.5. The State Department of Education shall provide technical support and assistance to school districts in implementing Section 49433. The technical support and assistance shall include, but need not be limited to, highlighting model nutrition programs, disseminating information to assist in the financial management of the food service programs, identifying fundraising mechanisms for school food services programs and for pupil activities that encourage healthy eating habits among pupils, and providing information regarding the current best practices in school child nutrition programs.

49433.7. The State Department of Education shall establish a three-year pilot program in which a total of not less than 10 high schools, middle schools, or any combination thereof, voluntarily adopt the provisions of Sections 49431 and 49432. The pilot program shall commence in the fall of the 2002–03 school year. Participating districts will be eligible to receive a grant pursuant to subdivision (c) of Section 49433. Districts will be eligible for an increased reimbursement rate for free and reduced price meals served at participating high schools as set forth in Section 49430.

49433.9. A school district participating in the pilot program shall comply with all of the following requirements:





(a) (1) No beverage other than any of the following shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners.

(B) Drinking water.

(C) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(D) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20 ounce serving.

(2) No carbonated beverage shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(3) (A) Except as set forth in subparagraph (B), no beverage that exceeds 12 ounces per serving shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(B) The 12-ounce maximum serving requirement does not apply to any of the following:

(i) Drinking water.

(ii) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(iii) An electrolyte replacement beverage. An electrolyte replacement beverage shall not exceed 20 ounces per serving.

(4) For the purposes of this subdivision and paragraph (3) of subdivision (b) of Section 494312, “added sweetener” means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(b) No food item shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday unless it does not exceed 12 ounces per serving and it meets all of the standards set forth in subparagraphs (A) to (C) of paragraph (2) of Section 49431.

(c) Entree items and side dish serving sizes shall be no larger than the portions of those foods served as part of the federal school meal program.

(d) Fruit and nonfried vegetables shall be offered for sale at any location where food is sold.

49434. (a) The Superintendent of Public Instruction shall annually randomly select not less than 10 percent of the school districts of the state to report compliance with this article as set forth in subdivision (b). Although the selection process shall be essentially random, the process



shall be weighted in such a manner so as to ensure that the pilot program contains participants that, as a group, are representative of the geographic diversity of the state. The group selected shall be sufficient to provide a statistically random and accurate sampling of the state as a whole.

(b) Each school district selected pursuant to subdivision (a) shall report to the Superintendent of Public Instruction in the coordinated compliance review regarding the extent to which it has complied with this article.

(c) For any school district that the Superintendent of Public Instruction finds is not in compliance with the mandatory provisions of this article, the Superintendent of Public Instruction shall issue a notice of noncompliance. The noncomplying school district shall adopt, and provide to the Superintendent of Public Instruction, a corrective plan. The corrective plan shall set forth the actions to be taken by the school district in order to ensure that the school district will be in full compliance within one year from the issuance of the noncompliance notification.

49435. The State Department of Education, with advice from the Child Nutrition Advisory Council, shall design and implement a financial incentive grant program to help and encourage schools to implement the school district policies and meet the goals described in subdivision (b) of Section 49433.

49436. (a) The State Department of Education shall monitor the implementation of Sections 49431, 49433, 49433.5, 49433.7, and 49433.9 and shall report to the Legislature by January 1, 2005, the department's evaluation of all of the following:

(1) The fiscal impact of the policies and standards developed by school districts.

(2) The effect of this article upon school districts and pupils, including, but not limited to, an assessment of pupil responses and related findings.

(3) Recommendations for improvements or additions.

(4) The resulting changes in food and beverage sales at schools.

(b) The State Department of Education shall report to the Legislature by June 1, 2004, regarding the initial implementation of Section 49431.

SEC. 3. The sum of five million five hundred thousand dollars (\$5,500,000) is hereby appropriated from the General Fund to the State Department of Education for the purposes of this article for allocation as follows:

(a) One million dollars (\$1,000,000) for the purpose of providing technical support and assistance to school districts in implementing



Section 49433 of the Education Code as set forth in Section 49433.5 of the Education Code.

(b) Four million dollars (\$4,000,000) for providing grants to applicant school districts for the purposes of developing policies as set forth in subdivision (c) of Section 49433 of the Education Code.

(c) Five hundred thousand dollars (\$500,000) for the purposes of monitoring and reporting pursuant to Section 49436 of the Education Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

